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09/957,018	09/20/2001	James E. Kaminkow	0112300-581	2458

29159 7590 04/27/2005		EXAMINER
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3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/957,018	KAMINKOW, JAMES E.
	Examiner	Art Unit	
	Jason Skaarup	3714	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>25 October 2004</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-4,6-12 and 14-25</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-4,6-12 and 14-25</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage

      application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/25/04</u>.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October

25, 2004 has been entered.

Information Disclosure Statement

2.   The Examiner considered the information disclosure statement (IDS)

submitted on October 25, 2004.

Specification

3.   Applicant is encouraged to review the cross-noting referenced in the specification

for accuracy and update the same if necessary. At least application (09/822,697) has

been patented (issued as U.S. Patent No. 6,796,899) since the filing of the instant

application.

Double Patenting

4.   The nonstatutory double patenting rejection is based on a judicially created

doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225

USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*,

418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be

used to overcome an actual or provisional rejection based on a nonstatutory double

patenting ground provided the conflicting application or patent is shown to be commonly

owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a

terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with

37 CFR 3.73(b).

Claims 1-4, 6-12 and 14-25 are rejected under the judicially created doctrine of

obviousness-type double patenting as being unpatentable over claims 1-33 of U.S.

Patent No. 6,599,185. Although the conflicting claims are not identical, at least claim 1

of the instant application is not patentably distinct from at least claim 28 of the '185

patent. Claim 28 of the '185 patent requires "a group of selections", "a plurality of pools

of awards", "a display device", and "a processor operable with the display device to

begin a bonus round upon a triggering event, cause one of selections from the group of

selections to be picked, determine after said selection is picked at least one award from

each of a plurality of pools of awards for distribution to the selection, distribute the

determined awards to the picked selection, provide a player with the awards associated with the selection, and end the bonus round". Claim 1 of the instant application only requires "a display device", "a processor in communication with the display device", "a plurality of selections adapted to be displayed to a player by the display device and a plurality of values associated with the selections", "a plurality of sets of values, wherein each set includes a plurality of the values and each set is determined and displayed by enabling the player to pick a plurality of the selections" and "at least one award generated by the processor by selecting at least one but not all of the plurality of values of the set". Thus it is apparent that the more specific claim 28 of the '185 patent is encompassed by claim 1 of the instant application. Following the rationale in *In re Goodman* cited above, where Applicant has once been granted a patent containing a claim for the specific or narrower invention, Applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

A similar analysis can be made between claims 6, 8, 9, 14, 15, 16, 18, 21, 23 and 25 of the instant application and claim 28 of the '185 patent. Again, Applicant is reminded that a timely filed Terminal Disclaimer in compliance with 37 C.F.R. 1.321(c) may be used to overcome this rejection provided that the instant application and conflicting patent are commonly owned.

Claim Objections

5.   Claims 6, 8, 9, 14, 15, 16, 18 and 19 are objected to because of the following informalities.

Claims 6, 8, 9, 14 and 15 each recite "a plurality of values associated with the selections" and "a plurality of sets of values, wherein each set includes a plurality of said values". It is unclear whether the plurality of said values in each set is the plurality of values associated with the selections or whether the plurality of sets includes the plurality of values associated with the selections.

Claims 16 and 18 each recite "a plurality of values associated with the selections" and "a plurality of sets of said values, wherein each set includes a plurality of values". It is unclear whether the plurality of values in each set is the plurality of values associated with the selections or whether the plurality of values in each set is only a portion or subset of the plurality of values associated with the selections.

It appears that Applicant intends to recite a plurality of values associated with a plurality of selections, wherein the plurality of values associated with the selections is grouped into a plurality of sets and wherein each set includes a portion of the values associated with the selections. In this manner, the plurality of sets includes all of the values associated with the selections and each set includes some of the values associated with the selections. However, claims 6, 8, 9, 14, 15, 16 and 18 are unclear in this regard for at least the reasons set forth above and the Examiner respectfully requests clarification thereof.

For consistency and clarity, Applicant might consider amending claims 6, 8, 9,

14, 15, 16 and 18 to recite "a plurality of sets including said values, wherein each set

includes a plurality of said values".

Additionally, claim 9 recites the limitation "said different sets" in the last line

thereof. For clarity, Applicant might consider amending claim 9 to recite "a plurality of

different sets, wherein each different set includes a plurality of said values" or

alternatively, to recite "selected from a plurality of different sets".

Claim 19 depends from claim 17 and recites the limitation "mathematical

operations". However, claim 17 provides sufficient antecedent basis for the limitation

"mathematical operation" and claim 18 provides sufficient antecedent basis for the

limitation "mathematical operations". Appropriate correction is required.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7.   Claims 1, 2, 4, 8-10, 12, 15 and 21 are rejected under 35 U.S.C. 102(e) as being

anticipated by Frohm et al. (U.S. Patent No. 6,592,457).

Frohm et al. disclose a gaming device (10) that comprises:

a display device (displays 14, 16 of Figures 2, 3A and 3B along with the related

description thereof);

a processor in communication with the display device (processor 20 of Figure 2

along with the related description thereof);

a plurality of selections (boxing gloves of Figure 3B along with the related

description thereof) adapted to be displayed to a player by the display device (Figure 3B

along with the related description thereof) and a plurality of values (punch outcomes of

Table 1 in col. 4 and Figure 3A along with the related description thereof) associated

with the selections (boxing gloves);

a plurality of sets of values (punch types of Figure 3B along with the related

description thereof), wherein each set (punch type) includes a plurality of the values

(punch outcomes) and each set is determined and displayed by enabling the player to

pick a plurality of the selections (Figure 3B along with the related description thereof,

wherein the punch types of hook and jab are determined and displayed on display 14

and respectively include a plurality of values or punch outcomes).

Regarding claim 1, Frohm et al. disclose at least one award (payoff of Table 1

along with the related description thereof) generated by the processor by selecting at

least one but not all of the plurality of values (punch outcomes) of the set (punch type).

Frohm et al. disclose at least seven values (punch outcomes) grouped into two sets

(punch types). A player is given a number of picks (36) to pick selections (boxing

gloves) as shown in Figure 3B. When the number of picks (36) is less than the number

of values (punch outcomes) at any given time during the game, Frohm et al. disclose

selection of a plurality of values (punch outcomes) but not all of the values (all of the

punch outcomes cannot be selected since the number of picks is less than the number

of values or punch outcomes) from different sets (punch types including a hook set and

a jab set, wherein the hook set and the jab set are different sets including identical

values or punch outcomes).

Regarding claim 2, Frohm et al. teach that at least the largest value (knockout

punch outcome) of the set (punch types including the hook and jab sets, wherein the

hook set and the jab set are different sets including the knockout punch outcome with a

payoff of 500 credits) is selected. See Table 1.

Regarding claim 4, Frohm et al. disclose a plurality of sets (punch types) that

each yield an award (payoff) by selecting at least one but not all of the plurality of values

of said set (punch type) and a resulting award (payoff of Table 1) that is provided to the

player by selecting at least one of the awards yielded from the plurality of sets. Frohm

et al. disclose at least seven values (punch outcomes) grouped into two sets (punch

types). A player is given a number of picks (36) to pick selections (boxing gloves) as

shown in Figure 3B. Each selection reveals a set (punch type including a hook set and

a jab set) of values (punch outcome) from which an award (payoff) is selected. An

award (payoff) can be yielded or selected from a first set (hook set) while another award

(payoff) can be yielded or selected from a second set (jab set). When the number of

picks (36) is less than the number of values (punch outcomes) at any given time during

the game, Frohm et al. disclose selection of a plurality of values (punch outcomes) but

not all of the values (all of the punch outcomes cannot be selected since the number of

picks is less than the number of values or punch outcomes) from different sets (punch types including the hook and jab sets, wherein the hook set and the jab set are different sets including identical values or punch outcomes). The resulting award is provided to the player (either the payoff from the hook set or the payoff the from jab set) and is the selected award from the sets (hook set and jab set).

Regarding claim 8, Frohm et al. disclose a plurality of awards (payoff of Table 1) generated by the processor by selecting a plurality of but not all of the values (punch outcomes) of said sets (punch types) and a resulting award generated by the processor by selecting at least one but not all of the awards from the sets. Frohm et al. disclose at least seven values (punch outcomes) grouped into two sets (punch types). A player is given a number of picks (36) to pick selections (boxing gloves) as shown in Figure 3B. Each selection reveals a set (punch type including a hook set and a jab set) of values (punch outcome) from which an award (payoff) is selected. An award (payoff) can be yielded or selected from a first set (hook set) while another award (payoff) can be yielded or selected from a second set (jab set). When the number of picks (36) is less than the number of values (punch outcomes) at any given time during the game, Frohm et al. disclose selection of a plurality of values (punch outcomes) but not all of the values (all of the punch outcomes cannot be selected since the number of picks is less than the number of values or punch outcomes) from different sets (punch types including the hook and jab sets, wherein the hook set and the jab set are different sets including identical values or punch outcomes). The resulting award is provided to the

player (either the payoff from the hook set or the payoff the from jab set) and is the

selected award from the sets (hook set and jab set).

Regarding claim 9, Frohm et al. disclose a plurality of awards (payoff from Table

1) generated by the processor by selecting a plurality of but not all of the values (punch

outcomes) from a plurality of the different sets (punch types). Frohm et al. disclose at

least seven values (punch outcomes) grouped into two sets (punch types). A player is

given a number of picks (36) to pick selections (boxing gloves) as shown in Figure 3B.

Each selection reveals a set (punch type including a hook set and a jab set) of values

(punch outcome) from which an award (payoff) is selected. An award (payoff) can be

yielded or selected from a first set (hook set) while another award (payoff) can be

yielded or selected from a second set (jab set). When the number of picks (36) is less

than the number of values (punch outcomes) at any given time during the game, Frohm

et al. disclose selection of a plurality of values (punch outcomes) but not all of the

values (all of the punch outcomes cannot be selected since the number of picks is less

than the number of values or punch outcomes) from different sets (punch types

including the hook and jab sets, wherein the hook set and the jab set are different sets

including identical values or punch outcomes). The award provided to the player (either

the payoff from the hook set or the payoff the from jab set) is selected from the sets

(hook set and jab set).

Regarding claim 10, Frohm et al. teach that at least the largest value (knockout

punch outcome) of at least one set (punch types including the hook and jab sets,

wherein the hook set and the jab set are different sets including the knockout punch

outcome with a payoff of 500 credits) is selected. See Table 1.

Regarding claim 12, Frohm et al. disclose a resulting award (payoff from Table 1)

generated by selecting at least one of the plurality of awards (payoffs) from the sets

(punch types). Frohm et al. disclose at least seven values (punch outcomes) grouped

into two sets (punch types). A player is given a number of picks (36) to pick selections

(boxing gloves) as shown in Figure 3B. Each selection reveals a set (punch type

including a hook set and a jab set) of values (punch outcome) from which an award

(payoff) is selected. An award (payoff) can be yielded or selected from a first set (hook

set) while another award (payoff) can be yielded or selected from a second set (jab set).

When the number of picks (36) is less than the number of values (punch outcomes) at

any given time during the game, Frohm et al. disclose selection of a plurality of values

(punch outcomes) but not all of the values (all of the punch outcomes cannot be

selected since the number of picks is less than the number of values or punch

outcomes) from different sets (punch types including the hook and jab sets, wherein the

hook set and the jab set are different sets including identical values or punch

outcomes). The resulting award is provided to the player (either the payoff from the

hook set or the payoff the from jab set) and is the selected award from the sets (hook

set and jab set).

Regarding claim 15, Frohm et al. disclose a plurality of awards (payoff from Table

1) generated by the processor by selecting at least one but not all of the plurality of

values (punch outcomes) selected from a plurality of the different sets (punch types)

and a resulting award generated by the processor by selecting at least one but not all of the plurality of awards (payoff) from the sets (punch types). Frohm et al. disclose at least seven values (punch outcomes) grouped into two sets (punch types). A player is given a number of picks (36) to pick selections (boxing gloves) as shown in Figure 3B. Each selection reveals a set (punch type including a hook set and a jab set) of values (punch outcome) from which an award (payoff) is selected. An award (payoff) can be yielded or selected from a first set (hook set) while another award (payoff) can be yielded or selected from a second set (jab set). When the number of picks (36) is less than the number of values (punch outcomes) at any given time during the game, Frohm et al. disclose selection of a plurality of values (punch outcomes) but not all of the values (all of the punch outcomes cannot be selected since the number of picks is less than the number of values or punch outcomes) from different sets (punch types including the hook and jab sets, wherein the hook set and the jab set are different sets including identical values or punch outcomes). The resulting award is provided to the player (either the payoff from the hook set or the payoff the from jab set) and is the selected award from the sets (hook set and jab set).

Regarding claim 21, Frohm et al. disclose a gaming device comprising a display device and a processor adapted to:

(a) display a plurality of selections (boxing gloves of Figure 3B along with the related description thereof), wherein the selections (boxing gloves) are associated with a plurality of values (punch outcomes of Table 1);

(b) select a plurality of the values (punch outcomes) based on a player's picks of

a plurality of the selections (boxing gloves, wherein a player is given a number of picks

36 to pick boxing gloves shown in Figure 3B);

(c) display the selected values (punch outcomes) in at least one set of a plurality

of values (punch types including the hook and jab sets, wherein the hook set and the

jab set are different sets including identical values or punch outcomes); and

(d) generate an award (payoff) by selecting at least one but not all of the values

in at least one set. An award (payoff) can be yielded or selected from a first set (hook

set) while another award (payoff) can be yielded or selected from a second set (jab set).

When the number of picks (36) is less than the number of values (punch outcomes) at

any given time during the game, Frohm et al. disclose selection of a plurality of values

(punch outcomes) but not all of the values (all of the punch outcomes cannot be

selected since the number of picks is less than the number of values or punch

outcomes) from different sets (punch types including the hook and jab sets, wherein the

hook set and the jab set are different sets including identical values or punch

outcomes). The resulting award is provided to the player (either the payoff from the

hook set or the payoff the from jab set) and is the selected award from at least one set

(hook set or jab set).

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9.   Claims 3, 6, 7, 11, 14, 16-20 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frohm et al. in combination with Vancura (U.S Patent No. 6,059,289).

As described above, Frohm et al. disclose a gaming device comprising a display device and a processor adapted to:

(a) display a plurality of selections (boxing gloves of Figure 3B along with the related description thereof), wherein the selections (boxing gloves) are associated with a plurality of values (punch outcomes of Table 1);

(b) select a plurality of the values (punch outcomes) based on a player's picks of a plurality of the selections (boxing gloves, wherein a player is given a number of picks 36 to pick boxing gloves shown in Figure 3B);

(c) display the selected values (punch outcomes) in a plurality of different sets of values (punch types including a hook set and a jab set), wherein each set of values includes a plurality of values (the hook set and the jab set are different sets including a plurality of identical values or punch outcomes); and

(d) generate awards by selecting at least one but not all of the awards from the plurality of different sets. An award (payoff) can be yielded or selected from a first set (hook set) while another award (payoff) can be yielded or selected from a second set (jab set). When the number of picks (36) is less than the number of values (punch outcomes) at any given time during the game, Frohm et al. disclose selection of a

plurality of values (punch outcomes) but not all of the values (all of the punch outcomes

cannot be selected since the number of picks is less than the number of values or

punch outcomes) from different sets (punch types including the hook and jab sets,

wherein the hook set and the jab set are different sets including identical values or

punch outcomes). The resulting award is provided to the player (either the payoff from

the hook set or the payoff the from jab set) and is the selected award from the sets

(hook set and jab set).

However, Frohm et al. does not explicitly teach generation of an award (e.g., a

plurality of awards or a resulting award) that is provided to the player by performing at

least one mathematical operation on the awards from the sets. In a related gaming

device, Vancura teaches that multipliers and negative value symbols (mathematical

operations) can be used as modifiers for awards in a bonus game to increase player

excitement while lengthening the game (col. 14, lines 14-17). Although Vancura does

not explicitly teach division as one of the mathematical operations, division is the

functional equivalent of multiplication when the multiplying factor is less than 1 and

greater than 0 (e.g., $1/3 = 1*0.33$, wherein 0.33 is the multiplying factor). The modifiers

allow game operators to vary the odds affecting payouts in the game taught by Vancura

(col. 12, lines 35-39). It would have been obvious for one skilled in the art to perform

mathematical operations selected from the group consisting of addition, subtraction,

multiplication or division in a bonus game as taught by Vancura to modify the awards

provided to a player in the gaming device taught by Frohm et al. in order to increase the

player excitement and lengthen the game as desirably taught by Vancura (col. 14, lines

14-17) and further in order to allow a game operator to vary the odds affecting payouts in the game as desirably taught by Vancura (col. 12., lines 35-39).

Regarding claim 7, Frohm et al. teach that the display device (displays 14, 16 of figures 3A and 3B along with the related descriptions thereof) displays the selections (boxing gloves) and reveals values (punch outcomes) associated with the selections (boxing gloves) that are not picked by the player (col. 4, lines 56-59).

Regarding claims 17, 19, 20, 22 and 24, Frohm et al. teach that the highest award or value (the knockout punch outcome with a payoff of 500 credits) can be selected from the plurality of sets (punch types including the hook and jab sets, wherein the hook set and the jab set are different sets that each include the knockout punch outcome with a payoff of 500 credits). See Table 1.

Response to Arguments

10.   Applicant's arguments filed October 25, 2004 with respect to claims 1-4, 6-12 and 14-25 have been considered but are moot in view of the new grounds of rejection.

Conclusion

11.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is listed on the attached Notice of References Cited (PTO-892).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jason Skaarup whose telephone number is 571-272-4455. The Examiner can normally be reached on Monday-Thursday (9:00-7:00).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, Jessica Harrison can be reached at 571-272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JESSICA HARRISON
PRIMARY EXAMINER